

*United States Court of Appeals
for the
District of Columbia Circuit*



**TRANSCRIPT OF
RECORD**

113

Taylor 9-0180

BRIEF FOR APPELLANT AND JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,186

277

RICHARD X. WILLIAMS,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

United States Court of Appeals
for the District of Columbia Circuit

OCT 8 1962

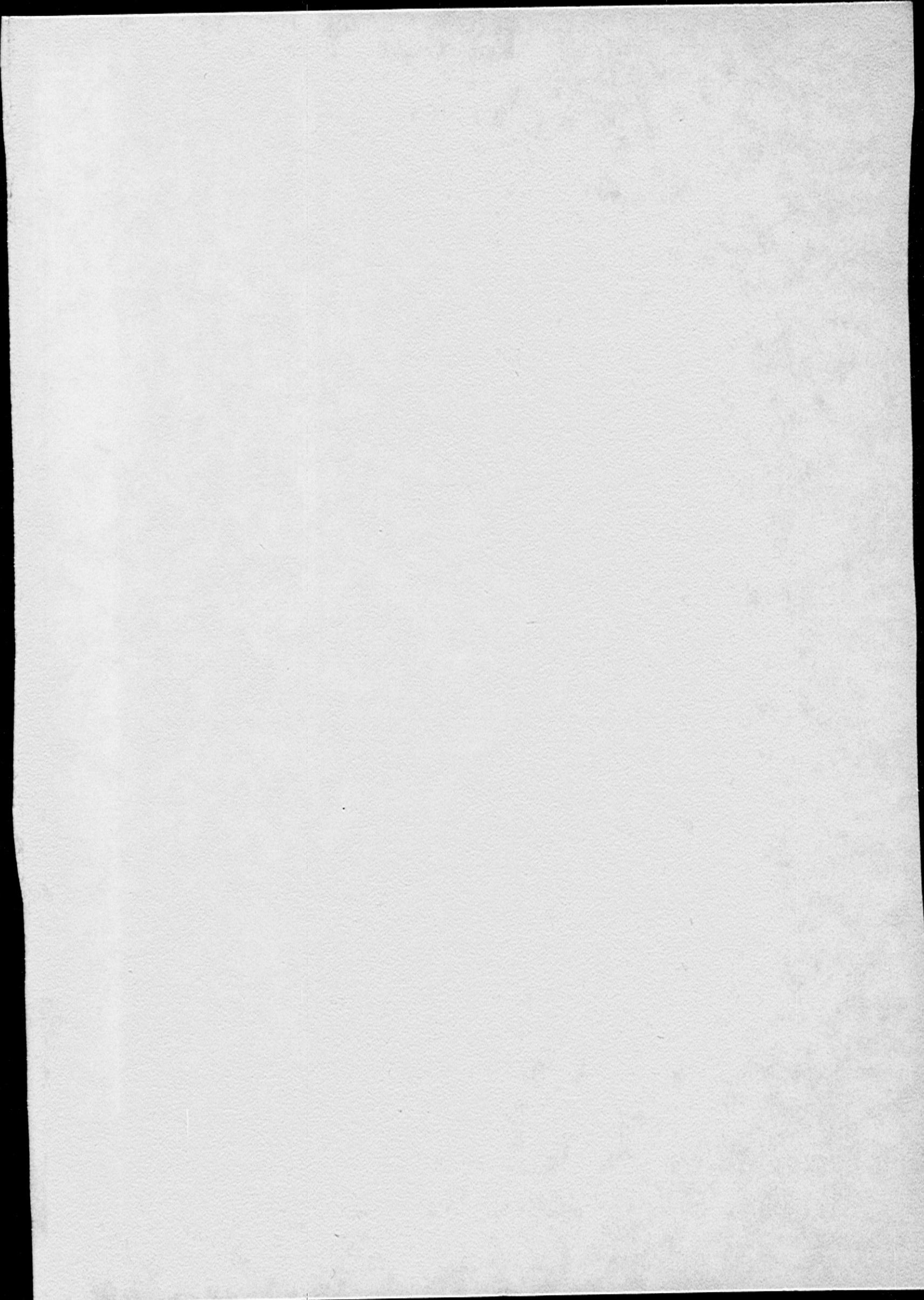
J. W. Stewart

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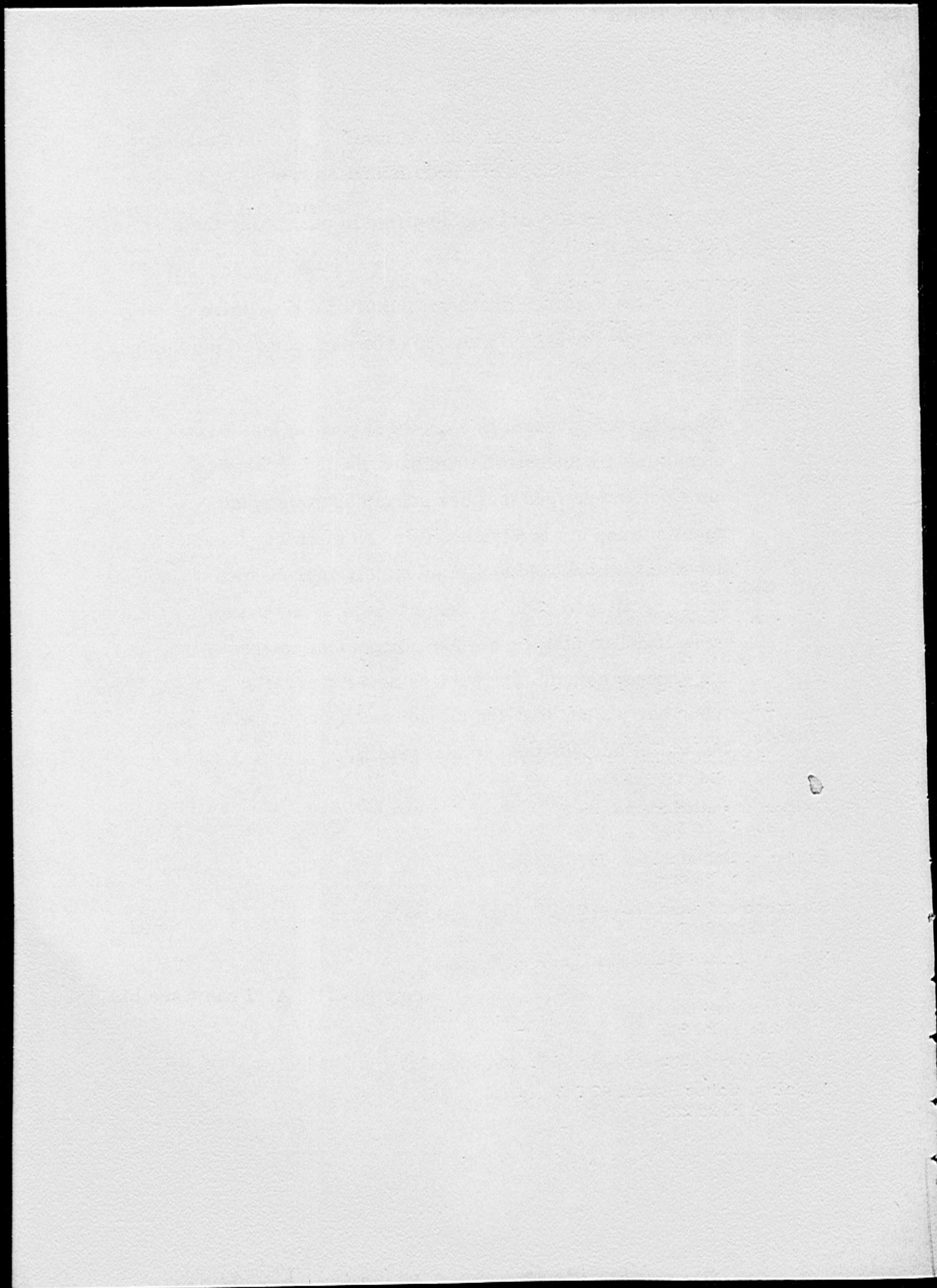


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QUESTIONS PRESENTED

1. Whether the trial court was justified in permitting the case to go to the jury, and
2. Whether the evidence presented justified a conviction of the crime of robbery, upon evidence which may be summarized for this purpose as follows:

Appellant was present in a crowd of people; the complaining witness, who had been jostled, grabbed his hand and noticed that her pocketbook was open; appellant and his two friends were on their way home; appellant was chased and immediately apprehended after the alleged robbery; no proceeds of any crime were found on him, on his two companions, or on the ground; complaining witness never thereafter found her wallet; that she did not see appellant with the wallet nor did she see him take it.

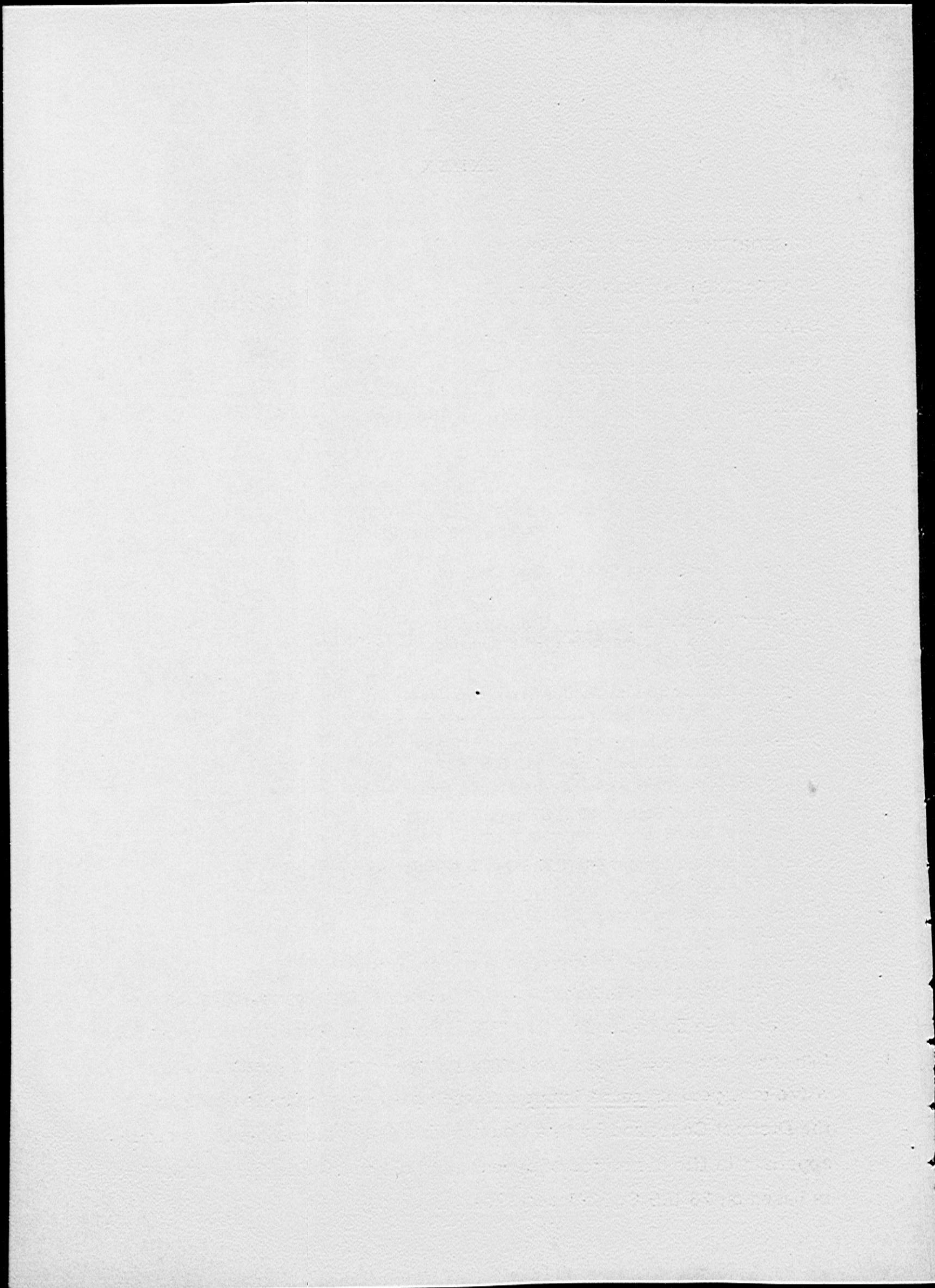


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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 17,186

RICHARD X. WILLIAMS,

Appellant,

v.

UNITED STATES OF AMERICA

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

Appellant was indicted for the Crime of Robbery tried by a jury and convicted on December 21, 1961. He was sentenced to serve no less than two years nor more than seven years. Appellant petitioned for leave to appeal in forma pauperis which petition was denied both in the District Court and by this Court. This Court subsequently permitted appellant to file his notice of appeal and the record herein. Jurisdiction is based on 28 U.S.C. 1291 and 1294.

STATEMENT OF THE CASE

One Mamie Allen testified that on August 25, 1961 at approximately one o'clock a.m. she was leaving 1721 1/2 7th St., N.W., Washington, D.C. (which is the House of Prayer) (J.A. 3), that she was standing in the midst of people, waiting to go off the street and getting ready to go home; had a silver-looking pocketbook hanging on her arm (J.A. 3); that she had checked her pocketbook for her transportation before she came out of church; found she had it; that she felt something rubbing up against her but didn't pay any attention; that, as she walked off, she felt appellant pressing against her and fumbling, also to which she paid no attention; that she turned around and he looked at her and smiled and she didn't pay any attention; that when she turned to walk off she felt his hand and caught his sleeve in her finger (J.A. 4); that he said "Woman, turn me loose"; that she accused him of having her pocketbook, which he denied; that she started "hollering" (J.A. 5); that she told the people to call the police; that the appellant ran away; that other people were chasing him (J.A. 5-6); that someone pulled her running after him; that she had \$1.75 in her wallet which was inside the pocketbook; that she didn't see appellant with the wallet, nor did she ever find it (J.A. 7); and that she didn't see appellant take the wallet (J.A. 7).

Detective Elroy A. Short testified he responded to the scene which was half a block from the House of Prayer (J.A. 8) that both complainant and appellant were present; that appellant told him that he and two other men had just left the pool room at 7th & T and were walking down 7th Street; that the other two men were present and corroborated this and that appellant denied taking anything from complainant. Detective Short testified that he searched both appellant and the other two men (J.A. 10) and that no wallet was found but that all had money on their persons. Detective Short also testified that when he arrived on the scene that appellant was in the custody of two or three of the church guards (J.A. 10).

Witness Algie Branch testified that he made a search for the wallet on the premises but couldn't find it (J.A. 12).

The Government rested at this point and appellant moved for a directed verdict of judgment of acquittal, which was denied.

James Acker, Jr., and the appellant testified that they and one Edward Burke were going home but that the Church let out just as they passed it (J.A. 13); that a woman shouted that appellant had her wallet; that appellant denied having it; that someone in the crowd said "Get him" and appellant started running; that Acker had appellant in his sight at all times; that he didn't see him take any wallet; that all three of them were searched and that only folding money was found on them. Appellant testified (J.A. 19-20) that he ran only when he was hit in the head by a man in white pants and stopped when someone said "shoot him".

Appellant renewed his motion for a directed verdict of judgment of acquittal, which was denied.

STATEMENT OF POINTS

1. It was error to refuse to direct a verdict of judgment of acquittal.
2. The verdict was contrary to the weight of the evidence.

SUMMARY OF ARGUMENT

I

The evidence of appellee showed that appellant was present in a crowd of people next to complainant; that she was jostled, grabbed appellant's hand, and then noticed that her pocketbook was open. She testified that she had checked her transportation in church and that she found her wallet missing later. With the case in this posture, it is submitted that no case of robbery was made out. However, the appellee

presented further evidence showing that appellant was chased and apprehended one half block away, had nothing on his person belonging to the complainant; that his two friends also had nothing, and further that the caretaker had searched the premises and found no wallet. Appellant contends that this additional evidence negated any robbery by him. The appellant's case supported these facts. The jury was thus permitted to speculate and guess at guilt.

II

The evidence mentioned in number I above is repeated and incorporated herein by reference. Not only did the evidence lack proof that appellant perpetrated the crime of robbery, but the overwhelming evidence on both sides indicated that he didn't. Even the complaining witness stating that she never saw appellant with her wallet (J.A. 7).

ARGUMENT

I

Curley v. U.S., 81 U.S. App. D.C. 389, 160 F2d 229 cert. den. 331 U.S. 837, 91 L. Ed. 1850, 67 S. Ct. 1511, states the law in this jurisdiction applicable to the direction of verdicts. Motions were timely made and denied in the instant action on the same grounds presented herein. The Court therein saying:

"* * * the judge must not allow the jury to speculate guilt without evidence or to stray into pure surmise, bias or prejudice".

The Court herein pointed out that there must be some fact (emphasis supplied) which to a reasonable mind fairly excludes the hypothesis of innocence. It goes on to say that this does not refer to the absence of evidence, but to the requisite presence of evidence. A careful reading of the transcript of the evidence reveals no facts which do in fact exclude appellant's hypothesis of innocence.

II

In Scott v. U.S., 98 U.S. App. D.C. 105, 232 F2d 362, which was also a robbery case, the evidence showed that one Pell had perpetrated a robbery; that Scott was seen across the street from the place of the crime with Pell five minutes before; that Pell's wallet contained a piece of paper with Scott's address on it and the notation "Enter through rear"; that Scott denied knowing Pell and that a pair of gun grips fairly matching Pell's gun were found in Scott's dresser. This Court said:

"The sum total of the foregoing evidence undoubtedly is sufficient to create grave suspicion that Scott advised, incited or connived at the offense or aided or abetted Pell. But grave suspicion is not enough. It seems to us that upon an objective consideration any reasonable man must necessarily have had reasonable doubt as to Scott's participation."

In Cooper v. U.S., 94 U.S. App. D.C. 343, 218 F.2d 39, wherein the "getaway" car in a robbery was shown to be Cooper's; that his fingerprints were found in it and that he tried to concoct an alibi, this Court held:

" * * * The total absence of any semblance of direct proof against Cooper . . . must, we think, make a reasonable man have a reasonable doubt upon the evidence as it stood* * *."

This case is also interesting in light of the Court's observation regarding Cooper's attempt to concoct an alibi. The Court saying:

"Much is made of his request to his cousin about being in Warsaw, but, in the absence of any probative - indeed any competent - evidence that he was not in Warsaw, his plea to her is as explainable by terror at his plight as by guilt * * *."

and further:

"After all, innocent people caught in a web of circumstances frequently become terror-stricken."

Wigfall v. U.S., 97 U.S. App. D.C. 252, 230 F2d 220, is almost directly in point with the instant action and would appear to completely nullify appellant's argument. However, a careful reading of the evidence in that case indicates the following essential differences: In Wigfall, the complainant left her streetcar seat and went to the exit with her purse, she felt a pressure on her hip and saw Wigfall hulking over her, and no one else was around her. When she alighted she noticed that her purse was open and her purse gone. But, in our case, the complainant checked her purse inside the church; she left in a crowd (in Wigfall, this Court mentioned the fact that no one else was around); and the appellant, being immediately apprehended, had none of the contents of the purse on his person, nor did his friends. Furthermore, the purse, was not recovered. Appellant also relies on Cady v. U.S., 54 U.S. App. D.C. 10, 293 F 829; Hammond v. U.S., 75 U.S. App. D.C. 397, 127 F2d 752, wherein the Court stated that, where all the substantial evidence is as consistent with innocence as with guilt, it is the duty of the appellate court to reverse. In Wigfall, this Court said that it would have to speculate outside the proven facts to infer innocence. This is hardly necessary in our case because the complainant had adequate opportunity to see the "taking", if it had in fact occurred, and where the appellant had no opportunity to jettison the fruits of the alleged crime. In the words of the appellant, he "must have eaten your wallet" (Tr. 87).

In Wigfall, the appellant argued as does the appellant herein that someone else could have taken the wallet. The Court there stated that there was no fact shown from which it could be inferred that someone other than Wigfall took it. In the instant case, there were between 150 and 200 people in the immediate vicinity, plus the fact that appellant neither had it on his person or jettisoned it. This is established by the fact that the caretaker couldn't find it. In Wigfall, of course, the appellant had more than adequate time to dispose of the proceeds of his crime.

This Court has said in Douglas v. U.S., 99 U.S. App. D.C., 232, 239 F2d 52:

"* * * A jury may not be upheld in arbitrarily convicting of crime. We as the reviewing court must be able to say that the result is rationally consistent with the evidence, measured by the required degree of proof * * *."

To the same effect Nelms v. U.S., 94 U.S. App. D.C. 267, 215 F2d 678 and Coleman v. U.S., ___ U.S. App. D.C. ___, ___ F. 2d ___, number 16728 decided 31 May, 1962. In U.S. v. Ross, 92 U.S. 281, 23 L. Ed. 707, the Supreme Court stated:

"* * * The law requires an open, visible connection between the principal and evidential facts and the deductions from them, and does not permit a decision to be made on remote inferences * * *."

In Farrar v. U.S., 107 U.S. App. D.C. 204, 275 F2d 868, wherein the appellant was charged with rape, this Court found that an essential element "overcoming of resistance by force" was not proven beyond a reasonable doubt, despite the fact that the complaining witness testified categorically that appellant had a knife. Here of course, the essential element "taking" was not only not proven, even by circumstantial evidence, but was almost completely negated. Absent the "taking", the only possible charge that could be sustained would have been "Attempted Robbery". It is submitted that even this lesser offense would have required far more proof than was adduced.

CONCLUSION

Appellant contends that in just taking the evidence most favorable to appellee and eliminating even the evidence of the appellee which was favorable to appellant, there was insufficient evidence to go the jury --

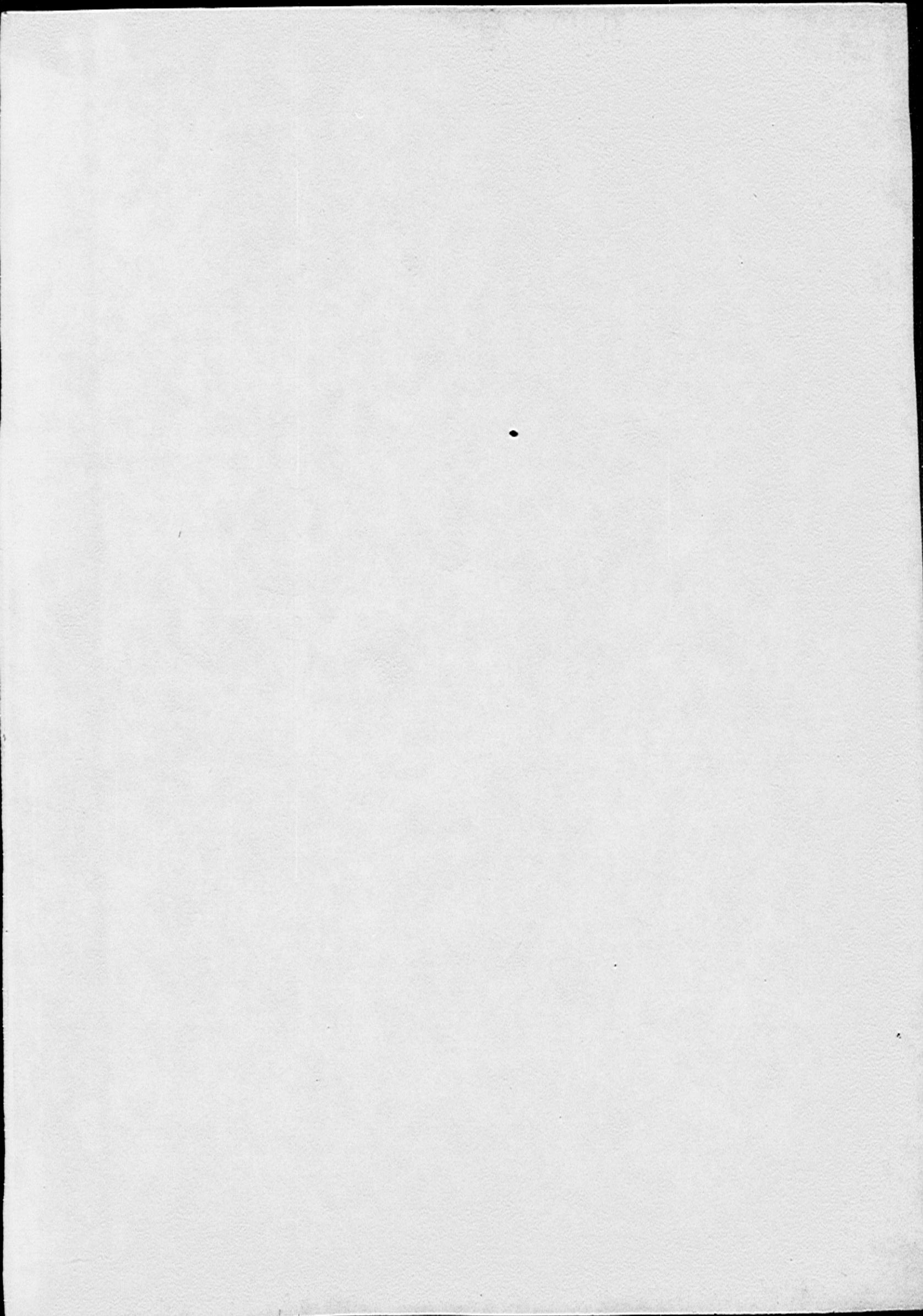
much less, was there any evidence on which a jury could base a guilty verdict. Appellant, therefore, respectfully asks this Court to reverse the conviction and remand with directions to enter a judgment of acquittal.

Respectfully submitted,

GEORGE P. LEMM

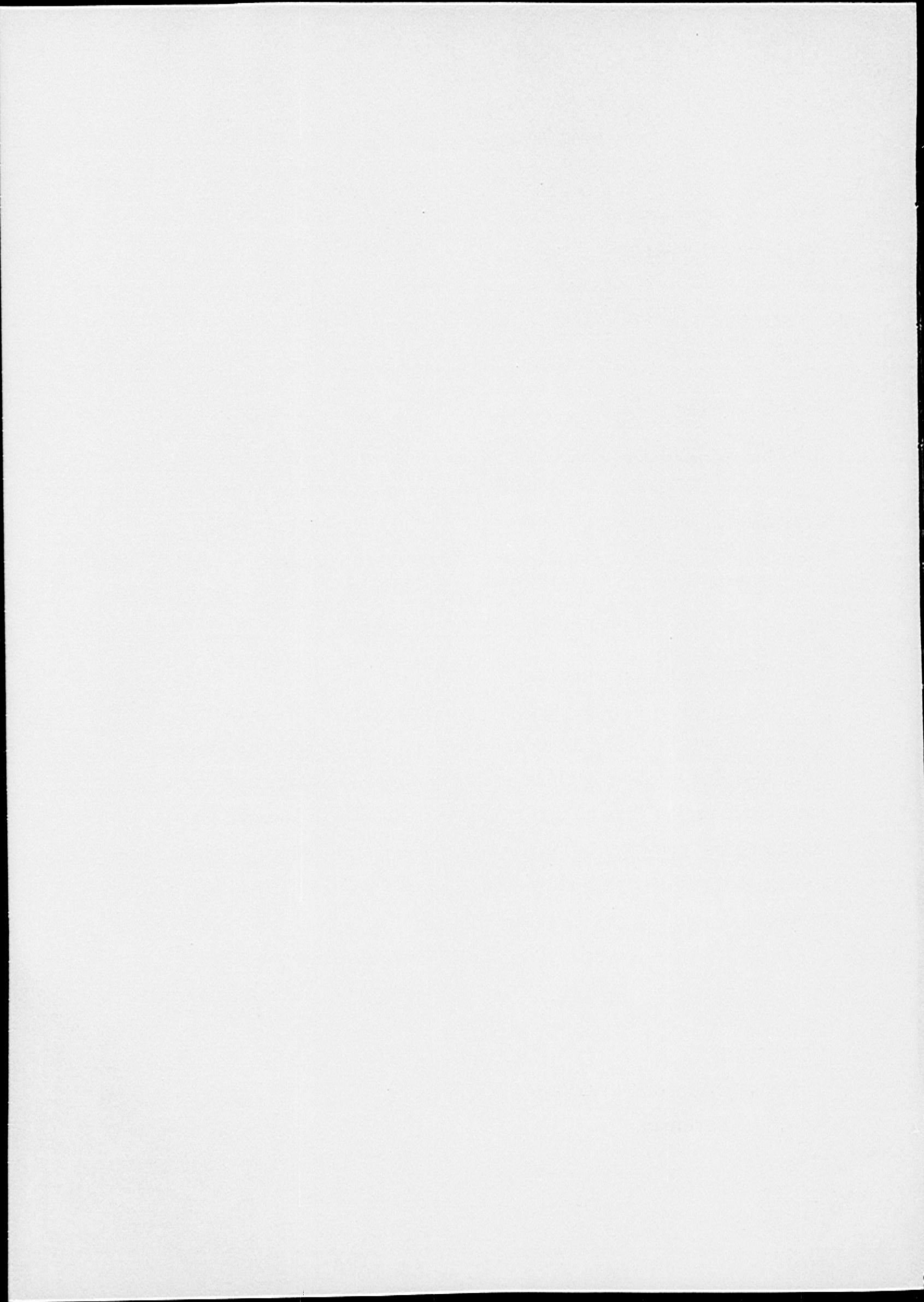
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JOINT APPENDIX

[Filed in Open Court Sep. 25, 1961]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding A Criminal Term

Grand Jury Impanelled on August 31, 1961, Sworn in on September 5, 1961

UNITED STATES OF AMERICA)	Criminal No. 787-61
v.)	Grand Jury No. 1009-61
RICHARD J. WILLIAMS,)	(Robbery)
)	
Defendant)	

[INDICTMENT]

The Grand Jury charges:

On or about August 25, 1961, within the District of Columbia, Richard J. Williams, by force and violence and against resistance and by sudden and stealthy seizure and snatching and by putting in fear, stole and took from the person and from the immediate actual possession of Mamie Allen, property of Mamie Allen of the value of about \$4.75, consisting of the following: one wallet of the value of \$3.00 and \$1.75 in money.

/s/ David C. Acheson

Attorney of the United States in
and for the District of Columbia

A TRUE BILL:

/s/ Clifford S. Livermore

Foreman.

[Filed Sep. 29, 1961]

PLEA OF DEFENDANT

On this 29th day of September, 1961, the defendant Richard J. Williams, appearing in proper person and by his attorney Lawrence J. Simmons, Esquire, being arraigned in open Court upon the indictment, the substance of the charge being stated to him, pleads not guilty thereto.

The defendant is remanded to the District of Columbia Jail.

By direction of

LEONARD P. WALSH
Presiding Judge
Criminal Court # Three

* * *

* * *

[Filed Aug. 7, 1962]

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

1

Washington, D. C.
Wednesday, December 20, 1961

The above-entitled cause came on for hearing before THE HONORABLE RICHMOND B. KEECH, United States District Judge, at approximately 2:37 p.m.

* * * * *

8

MAMIE ALLEN

was called as a witness by the Government, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MOORE:

Q. * * * Will you state your name and address to His Honor and ladies and gentlemen of the jury, please. A. Mamie Allen, 1018 Potomac Avenue, Southeast.

Q. Mrs. Allen, directing your attention to August 25, of this year, which was a Friday, approximately one o'clock in the morning will you

tell us where you were? A. I was at 1721-1/2 7th Street, Northwest.

Q. What was located at that address? A. It is the House of Prayer for All People.

Q. Had you attended that church on this night? A. Yes.

9 I was at the church and it had just turned out, dismissed, and I was about ready to come home.

Q. All right. What time approximately did you leave from church?

A. Well, we left -- church turned out at one o'clock.

* * * * *

Q. That would be the Thursday of the 24th? A. That's right.

Q. And you stayed all the night until the morning of the 25th?

A. That's right.

10 Q. Approximately one o'clock. A. Yes, we had services that late.

* * * * *

Q. Tell us whether anything unusual occurred at that time. A. Well, at that time, I was standing in the midst of people waiting to go off the street and getting ready to go home.

In the meantime, I had -- not this pocketbook -- I didn't bring it with me -- but it was another pocketbook, a lighter pocketbook and a silver-looking pocketbook and it was a larger one and it had the same kind 11 of catch as this one has on it.

And before I came out of church, I checked my pocketbook in order to see whether I have my transportation so that I could -- all I would have to do is put my hand in the pocketbook and open it and take out my transportation.

And after I did, I looked and found my transportation and everything was all right. Then I puts it back in my billfold and closes my billfold up and then puts in back into my big pocket and closes my pocketbook and my pocketbook is awful hard to open and it was -- I had it on my arm, standing on the sidewalk, like that (indicating).

And by being so many people standing there, waiting to go off of the street to go home, well, I felt a -- you know -- feeling something rubbing

up against but I don't pay no attention, because I figured that it was people -- you know -- crowding.

So as I was standing and as I walked off -- up to go off of the street, this person walked -- pressing up against me and I could feel him fumbling -- you know -- so I didn't pay any attention to it.

And after a while, when I made a step back, when I stepped back, this person kept pressing -- that made me to look around and see what he was doing and he looked in my face and smiled, and I didn't pay no attention.

12 So when he did that, then I don't pay no attention so then I went to start again. Then when I went to walk off that time, I felt his hand and I did just like that (indicating). When I turned my hand back like that, I caught his sleeve into my finger like this and held to it, and when I looked he had my pocketbook swinging open.

And I said, "Oh," I said, "my pocketbook."

He said, "Woman, turn me loose."

So I says to him, I says, "I am not going to turn you loose."

I said, "My billfold is gone. You got my billfold."

"I haven't got your billfold."

I said, "Yes, you have." I said, "You got my billfold."

He said, "Turn me loose."

I said, "I am not going to until you give me my billfold back."

He said, "I am not going to. I didn't have it."

I say, "Well, you do have it."

I say, "Somebody got it. It's gone out of my pocketbook."

So he said a curse word. And I just swung on to him. So then I got a chance, I grabbed him with this hand and held to him.

And he say, "You turn me loose. You going crazy. Turn me loose."

13 I say, "No, I am not going crazy."

I say, "I will turn you loose if you give me my billfold."

"I don't have your billfold. I don't have your billfold."

I say, "Well, you got it or somebody got it."

I say, "You done pass it on to somebody else."

"Crazy. I ain't got it," and he cursed at me.

At that time I was hollering and someone says, "What's the matter with you? What's the matter with you?"

I says, "This man has got my billfold out of my pocketbook."

He say, "Got your billfold?"

I say, "Yes."

"Well, call the police, call the police."

I say, "Well, I can't call the police. You call them for me."

* * * * *

14 THE WITNESS: Anyhow, I say to him, "Give me my billfold."

He say, "I don't have it."

I say, "Okay, if you don't have it," I say, "somebody got it."

I say, "You done pass it on."

So he swung on to me, and I holler, "Police." I say, "Call the police."

I say, "You call the police. I can't call them. You call them."

So that's how they hollered, "Police."

So somebody hollered and when I did that, he snatched away from me and ran in the street and took off down the street and that's --

BY MR. MOORE:

Q. Let me ask you this question, Mrs. Allen.

First of all, do you see the person in the courtroom today who was standing along side you -- A. That I got by the sleeve?

Q. That rubbed against you and whom you grabbed by the sleeve?

A. Yes, sir, I do.

Q. Will you point that person out, please? A. Sitting at the corner of the table there.

* * * * *

15 MR. MOORE: May the record show that the witness identified the defendant?

THE COURT: Yes.

* * * * *

16 Q. [By Mr. Moore] Did you see -- were other people chasing him?

A. Yes, other people were chasing him. Someone grabbed me by the hand and said to me, pulling me, for me to come on and was pulling me, running, so I could go too -- said, "They got him across the street over there."

So then I went on across and when I got over there they had him over there.

* * * *

17 THE COURT: Do I understand that you only identified one person?

THE WITNESS: Yes, only one person, the one that had my --

THE COURT: Is that the same person you identified in court here this afternoon?

THE WITNESS: Yes, sir.

* * * *

18 CROSS EXAMINATION

BY MR. SIMMONS:

* * * *

21 Q. Did you actually see Mr. Williams just before you felt somebody nudge you? A. Well, I -- no, I never seen him before until I felt this pressure on my arm, see, and I never paid no attention, because I figured it was people standing, you know, but when I looked around, he is right up there beside of me and grinned in my face when I went to look around. At the time I paid no attention, and so when I moved up, he moved on up with me and then when I moved back, he moved back with me, well, that -- still I didn't pay any attention, but after he did that, while I felt this fumbling

22 and I done like that with my hand (indicating) and when I grabbed him by his sleeve and held on to him, then -- and I cast my eyes down, there was my pocketbook wide open, and I said to him -- he said, 'Woman, turn me loose.'

* * * *

23 Q. Did you grab both hands at the same time? A. No.

Q. How long after you took the left hand did you take the right hand?

A. Two seconds, I guess.

24 Q. Two seconds. Where was the wallet at that time? A. I don't know where the wallet was. It was gone.

Q. You didn't see him with it? A. No, I didn't see him with it but --

Q. Did you see it on the ground? A. No, I didn't see it on the ground.

Q. Did you see anybody else around? A. Nobody else had --

Q. Did you see anybody else around Mr. Williams? A. No, I didn't see anyone else -- but all the crowd of people.

Q. You had both of his hands? A. I had both of his hands, because he swung me around and --

* * * * *

THE WITNESS: With the left hand that was in my pocketbook and then I had grabbed him with the right hand, the other hand was the right hand, and I was just swinging on to him and the pocketbook -- I closed it after I found it was open, so then he said he didn't have it. I said, "You

25 got it," I said --

* * * * *

26 Q. [By Mr. Simmons] But at this moment, you said, "Mr. Williams," -- you didn't call him Williams -- you said, "You took my pocketbook or somebody took it," is that right? A. I say, "You got it or you done pass it on to someone else."

"No," he says, "I don't have it."

I say, "No, you ain't got it. You done pass it on to somebody else."

27 Q. But you didn't see him take it? A. No, I didn't --

Q. You didn't -- A. -- I don't know whether he took it out --

* * * * *

Q. You don't know whether he took that or not, do you? A. I don't know definitely. But I know he had his hand in my pocketbook.

Q. Was it light this morning? Were there street lights along this --
A. Yes, all the street lights were on.

* * * * *

30 Q. I understand that. What did Mr. Williams do the moment that you released him or he released himself? Then what happened?

A. What did he do? Well, he broke from me and ran down the street.

* * * * *

31 Q. Did any of them have a knife or -- A. I --

Q. -- or a gun? A. I didn't see no knife. I didn't see no knife.

* * * * *

REDIRECT EXAMINATION

BY MR. MOORE:

* * * * *

32 Q. Can you tell us whether your purse was closed before you felt this? A. Yes, sir, it was closed.

* * * * *

ELROY SHORT

was called as a witness by the Government, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MOORE:

* * * * *

Q. Directing your attention to August 25 of this year, Detective Short, were you so assigned on that day? A. I was, sir.

33 Q. At approximately one o'clock in the morning between the hours of one and one-thirty, did you have an occasion to respond to the 1700 block of 7th Street, Northwest, in the District of Columbia, in connection with an alleged robbery or pickpocket? A. We responded to 7th and Rhode Island Avenue, radio run.

Q. And how far is 7th and Rhode Island Avenue from the House of Prayer for All People, which is located on 7th Street? A. About a half a block.

* * * * *

Q. What, if anything, did you do? A. I learned from --

34 THE COURT: You received some information?

THE WITNESS: Information from them.

THE COURT: All right. Then what did you do?

THE WITNESS: I talked to this defendant and while I was talking to him, Mrs. Allen walked up, and she said that this was the man that have --

BY MR. MOORE:

Q. Wait a minute. Was this right in this defendant's presence?

A. Yes, sir.

Q. All right. A. She said that this was the man that had picked her pocket and that she had caught his hand in her pocketbook up there in front of the church and that he had broken away from her and ran.

I asked her how did she know it was the man. She said, "Because I had a hold of his shirt sleeve, and when he snatched away from me, he tore the button loose off his shirt sleeve."

And on the defendant's right shirt sleeve it had been torn loose from the shirt.

* * * * *

36 Q. Did he say anything further? A. Well, a crowd had gathered there then, so I carried him to -- I put the defendant and two other fellows in a patrol wagon and I put the complainant in the scout car. We went to Number 2 Precinct.

And in the Precinct there, while he was being booked, he told Mrs. Allen, he said, "Look, lady, I don't want to get locked up on this," he say. "You didn't lose no more than a little bit of money. How about letting me give you that money back," he say, "because I don't want to go to court for this?"

So she told him, "No, if you say you didn't take it, why you want to pay it back to me?" she said.

* * * * *

CROSS EXAMINATION

BY MR. SIMMONS:

* * * * *

Q. 1:20 approximately? And where were you at the time -- where

was Mr. Williams at the time that you met him? A. He was standing on the sidewalk in the 600 block of Rhode Island Avenue along side the school fence there and two or three of the guards from the church that

37 had hold to him.

Q. Now, at that time, did you search Mr. Williams or his two companions? A. Shortly afterwards, yes, sir.

Q. Where? A. Right there.

Q. Right there? A. Yes, sir.

Q. Did you find the wallet? A. No, sir, I did not.

Q. Did you find any money on Mr. Williams? A. Yes, sir, he had some money.

Q. How much -- what was it? A. Paper money on him. I don't remember how much.

Q. Did he have any coins? A. I don't remember, sir.

Q. At the time did you search his -- either of his two companions? A. Yes, sir.

Q. Did they have any money? A. I believe one of them had some money. I don't think the other one --

Q. Did he have some coins? A. He may have.

38 Q. As I recall, you stated that Mrs. Allen had pulled loose Mr. Williams' shirt sleeve, is that correct? A. Yes.

Q. What was pulled loose, the button? A. Button.

Q. Was the button torn off? A. No, not torn off.

Q. Was the sleeve torn? A. It was open. It came unbuttoned.

Q. Was the button loose at all? A. No.

Q. Was it this shirt that he is wearing now? A. I can't see his shirt -- yes -- I think that -- long sleeved sport shirt.

Q. But you searched for the wallet, did you? A. I did, sir. I searched them for it.

Q. I mean the premises, the sidewalk. A. No. This was in the summer time and it was a busy street.

Q. At 1:30 in the morning? A. Yes, sir.

Q. Busy? A. Yes, sir.

Q. Was it light? A. Street lights was on.

* * * * *

45

Washington, D. C.
Thursday, December 21, 1961

* * * * *

46

ALGIE BRANCH

was called as a witness by the Government, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

(Mr. Overton is conferring with the defendant).

BY MR. MOORE:

* * * * *

47

Q. Directing your attention to August 25, which was a Friday, at approximately one o'clock in the morning, were you at the House of Prayer for All People which is located on 7th Street? A. That's right.

Q. At about the same time in the morning, Mr. Branch, at those premises, did you see a commotion in front of that address? A. Not until a lady came up to me, touched me on the left shoulder and pointed me to a young man walking with his back to me going towards Rhode Island Avenue -- is it avenue or street?

Q. Rhode Island Avenue. A. Rhode Island Avenue. She said, "That man got my wallet."

Q. What, if anything, did you do? A. I went after him and I walked up to him on the corner and he turned around and faced me.

He said, "What do you want with me?" He said, "I ain't got nothing."

I said, "Well, come on and go back. They want you back there at the church. Want to ask you some questions, so come on go back."

48

He said, "Well, I ain't got nothing." Then he turned -- turned around and started to run and I grabbed at him, but I missed him and two more of the boys behind me that seen it, they ran after him. They beat me running across the street and we caught him on the other side of Rhode Island Avenue. When we caught him, two more boys with

me and they had him and I was standing looking on. At that time the two officers came up in the red car and taken the boy from us.

Q. You never searched the man at that time? A. I didn't, no.

Q. Did you see anybody else search him? A. Didn't anyone search him, but the officer.

* * * * *

49 **CROSS EXAMINATION**

BY MR. SIMMONS:

* * * * *

Q. Was anything found on their persons at that time of the search?

50 A. When they was searching them before me it wasn't.

Q. At the time of the search. A. Wasn't anything found as I seen it.

Q. Did you try to find the wallet that the lady told you she had lost?

A. I did. I looked all around where we were at the time, all in the lot there and I didn't see any wallet and I went back where we started at and I didn't see any wallet.

* * * * *

51 MR. SIMMONS: This is the time I wish to make a motion for a directed judgment of acquittal. I don't believe that the case has been proved beyond a reasonable doubt. All the complaining witness has proved or said is that * * *

* * * * *

54 **JAMES ACKER, JR.**

was called as a witness by the Defendant, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SIMMONS:

* * * * *

Q. Were you and Mr. Williams together on the morning of August 25? A. Yes, sir, we was in the pool room together.

Q. Don't answer until I finish my question.

55 Where was that? A. We was in the 7th and T Street pool room.

Q. Whereabouts? A. 7th and T Street pool room.

* * * *

Q. At that time, did anything unusual occur, to your recollection?

A. Well, we were going down 7th Street and, you know, church breaks out, and people coming out of church there and everything, and the crowd broke up and this lady -- I don't know her name -- she said that Richard had her

56 wallet.

Q. Whereabouts were you at the time that Mr. Williams was walking along there? Were you in front of him or back of him or -- A. I was in back of him. I didn't see him get no wallet.

* * * *

57 Q. Then what happened after that? A. Well, she said, 'He has my wallet.' And then people that was around said, "Yes, he is the one that have it." They just kept going like that. And he said, "I don't have
58 your wallet at all."

Then this man run up and say, "I know you got it." Say, "Why don't you give it back to her?" something like that, and then another lady ran up and say, "Yes, I seen him with it."

Well, they just kept rounding up on him -- you know, people just kept coming up on him and saying -- and he kept saying, "I don't have your wallet at all."

So he just kept walking on down the street and they just kept following him.

Q. At that time did any member of the group say as to -- A. Some man say, "Get him," and this crowd started chasing him. Didn't leave him no alternative -- you know -- but just keep walking.

Q. Did he walk or did he run? A. He ran to -- in front of the school yard.

Q. Then what happened? A. Well, the only thing I seen -- I seen one guy -- he was an old guy -- I think he was a police up there -- and this people there -- this particular one had a gun in his back pocket because

I saw the print of his gun in his back pocket.

* * * *

59 THE COURT: Did you see a gun?

THE WITNESS: I saw something like a gun. I wouldn't say it was a gun at all.

THE COURT: What did you actually see?

THE WITNESS: I seen a print of a pistol.

THE COURT: Meaning what?

THE WITNESS: Sir?

THE COURT: What do you mean by print? I do not understand you.

THE WITNESS: Like you say, like a print of a pistol being in the back pocket, something like that, you know.

THE COURT: Do you understand what he means by print?

MR. SIMMONS: Impression.

60 THE WITNESS: Yes.

THE COURT: All right.

BY MR. SIMMONS:

Q. At that time, were you searched? A. Yes, sir, I was searched.

Q. By whom? A. By the officers.

Q. By an officer? A. Yes, sir.

Q. Was anyone else searched at that time? A. He searched all of us.

Q. Who is "all of us?" A. Edward Burke and Richard J. Williams.

Q. Was any wallet found upon you at that time? A. No, sir, I didn't have no wallet.

Q. Was one taken from Mr. Williams? A. No, sir.

Q. And Mr. Burke? A. Sir?

Q. Was one taken from Mr. Burke at that time? A. No, sir, he didn't have no wallet.

Q. Did you have any change in your pocket? A. I had two dollars.

Q. In change? A. No, sir, I had two dollar bill, that's all.

61 Q. Did Mr. Burke have any change? A. No, sir.

Q. Did Mr. Williams? A. No, sir.

* * * *

63

CROSS EXAMINATION

BY MR. MOORE:

* * * *

65 Q. Well, when did that happen? I mean, you were all abreast, weren't you, when you left -- A. We was just walking all up and down the street, it was -- lot of talking going on, you know.

Q. Oh, you were talking among each other, weren't you? A. Yes, sir.

Q. Weren't you walking side by side? A. Well, we was walking -- like this (indicating). Me and Burke was right here and Richard was right there, a little bit in front of us.

66 Q. Was he -- from the time you left the pool room, you, Richard Williams and Edward Burke, you were all walking together, all three of you? A. We split up. We were just in a catty-corner way like this, (indicating) me, and that was Burke and that was Richard -- but we were split -- we was apart from each other.

Q. You were having a conversation among the three of you, weren't you? A. Yes, sir, but we was -- you know -- in an angle-like. Well, we just -- we was taking up the whole street -- the whole street -- when we was walking down the street, we was spreaded out, you know, taking up the whole street.

Q. You were walking on the sidewalk together, weren't you? A. Sir?

Q. You were walking down the sidewalk, weren't you? A. Yes, sir.

Q. And you were close enough to each other to hear what each one was saying to the other, weren't you? A. (Pause).

Q. Weren't you? A. Yes, sir.

* * * *

69 Q. All right. Now, tell me, if you had the five feet between you when you left S Street, walking toward R, when did there come a time when you had this distance, the distance between you and me -- when did that distance -- A. The church broke out. The people came out of the church

and the church was letting out at the time, so we stopped to let the people come past.

THE COURT: Let me see if I understand you. Are you saying that you and Burke stopped and Williams kept on going?

THE WITNESS: Yes, sir.

THE COURT: Is that the reason he was ahead of you?

THE WITNESS: Yes, sir.

BY MR. MOORE:

Q. Where were you when you stopped? A. Sir?

Q. Well, where were you and Burke when you stopped? A. See, it's three doors, so we was at the first door, and the first door is out about three or four doors from the restaurant, the little restaurant.

70 Q. Let me see if I understand you. When you say there are three doors, you mean there are three doors to the church? A. Yes, sir, there is two end doors and a big middle door, and there was people coming out of all three of them.

Q. Now, where were you and Burke with reference to those doors when you stopped? A. About the first door, right by the gate there, between the gate and the door.

Q. And that would be the first door to the north side of the church, is that right? A. Going up, going up.

Q. You stopped, you and Burke stopped there? A. Yes, sir.

Q. And Williams kept going? A. Yes, sir.

Q. When Williams kept going, did he walk into the crowd of people? Did he walk into the crowd of people? A. I imagine so. He walked, so he was walking there and the people was coming out, people, you know, coming out of the church.

Q. And you and Burke stopped to let the people out, is that right?

A. Yes, sir.

Q. And Williams kept walking? A. Yes, sir.

71 Q. I am asking you, did he walk among the people? A. I couldn't say that he walked. I don't know if he walked or not.

Q. Let me ask you this. You saw the people coming out of the church, didn't you? A. There was a bunch of people coming out.

Q. And you have already told Mr. Simmons, when he asked you, that Williams was in your view at all times, wasn't he? A. Yes, sir.

Q. Well, did you see him walk among the people? A. He walked among the people when I seen him.

Q. Now, when you and Burke stopped, did you then start walking again? A. After the people had broke up. Well, see, we had stopped and let the people come through. There was a whole lot of people, oh, probably about 150 people, church letting out like that, and they was all coming out of all three doors and some part, they was coming out the gate.

Q. You are familiar with that church there, aren't you? You have passed that church a number of times? A. Yes, sir.

Q. Isn't that true? A. Yes, sir.

72 Q. Now, when you and Burke stopped, what was the next thing that you saw Williams do? A. I didn't see him do nothing but walk through the crowd.

Q. You saw him walk through the crowd? A. Yes, sir.

Q. Now, after he walked through the crowd, what was the next thing that you heard or saw? A. This lady say he had her wallet.

Q. Where was Williams then? A. Sir?

Q. Where was Williams at the time the lady-- A. He was standing there arguing with the lady.

Q. In the crowd? A. Yes, sir.

Q. Where were you and Burke? A. We was right there at the scene of the argument.

Q. Did you and Burke walk in the direction of the crowd then?

A. Yes, sir, we came in and the lady say he had her wallet.

Q. What was the distance, and tell me, if you can, the distance between you and Williams when the lady said Williams had her wallet?

A. We was right on him then.

73 Q. You were right at him, then, weren't you? A. Yes, sir.

Q. You saw the lady holding him by the hand, didn't you? A. The lady say he had her wallet -- I didn't see --

THE COURT: No, Mr. Witness, you understand that question. Did the lady have hold of his hand or his sleeve or any part of him?

THE WITNESS: I didn't see her have him.

BY MR. MOORE:

Q. But you were standing right there? A. Yes, sir.

* * * * *

80

RICHARD J. WILLIAMS

having been called as a witness in his own behalf, and having been duly affirmed, was examined and testified as follows:

81

DIRECT EXAMINATION

BY MR. SIMMONS:

* * * * *

84 Q. Then what happened? A. Burke said he was going home. James Acker said he was going home. He said he was going home because he had to go to work, so I said, "I got to go also, so we all going home."

So we were walking down the street; now, during the -- crossing over the 1700 block on 7th Street, and we got to the church, seems as though the crowd -- you know -- got around us somehow -- I don't know. The woman said, "Give me my pocketbook," just like that.

I looked. She had my shirt sleeve. I said, "Lady, what's wrong with you?"

She said, "Give me my pocketbook." She grabbed my other hand. I said, "What's wrong with you, lady?"

She said, "You got my pocketbook."

I said, "I don't have no pocketbook."

She said, "You got my pocketbook."

85 I said, "Are you crazy? How can I have your pocketbook?"

She said, "You got my pocketbook."

"You can see I don't have your pocketbook."

She said, "Give me my pocketbook."

I said, "I do not have your pocketbook. I don't even have a wallet of my own, nonetheless yours." She said, "Give me my wallet."

I said, "Lady, you must be insane," and snatched my arm away from her, and I walked around the crowd. I got down to this little store, and I looked in to see if James Acker and Burke was in there.

When I got there, I looked in the store, I didn't see nobody. Someone says, "Hey," so I turned around and then these men were behind me and this fellow that got on the stand the last time, he said, "Where is the lady's pocketbook?"

I say, "What pocketbook?" And I looked and somebody had knives--

*

*

*

86 THE WITNESS: When I told the man that I didn't have the lady's pocketbook, someone else said, "You got the lady's pocketbook."

I said, "I don't have the lady's pocketbook." Then I looked and I seen the shiny objects and one I know was sort of what they call a hoop-bill knife, which was in a fellow had on white pants -- he was the first fellow that hit me. He said, "You got the lady's wallet."

I said, "I don't have the lady's wallet." He hit me right here and I turned around and said, "What's wrong with you fellows?" Then somebody hit me over here (indicating) and I started running, and as I started running, this other fellow -- I remember when I was standing in front of the man he had his hands in his back pocket -- and he said, "You got the lady's wallet." I said, "I don't have it," and I started to run.

Somebody said, "Shoot him," and I stopped on the other side of the street, I says, "Man, I am trying to tell you I don't have no lady's pocketbook."

*

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*

*

90 Q. Did Detective Short search you at that time? A. Yes, he did.

Q. What did he find on you? A. \$18.00, two car tokens, two pennies and a little thing which I keep my identification in.

Q. Did he also search Mr. Acker? A. Yes, he did.

Q. And to your knowledge, was anything found on him? A. A two dollar bill, no change.

Q. And Mr. Burke, was he searched by the Detective? A. Yes, he was.

Q. And what to your knowledge was found on Mr. Burke? A. I think it was \$19.00 and no change. We had been playing pool and used all our change up, we had broke our money up, you know, playing pool. We played until the last dime and we left out the pool room.

* * * *

91

CROSS EXAMINATION

BY MR. MOORE:

* * * *

97 Q. Did you talk with each other until you reached the House of Prayer? A. No, I don't think so.

Q. Then you were ahead of them? A. Right.

Q. Tell us what happened then? A. I got there first. When I got there, seemed like people crowded around me and the lady said I had her pocketbook.

Q. Well, weren't people coming out of the church when you reached -- A. When I came to the church? No. When I came to the church, they were not.

Q. No people outside on the street when you came -- A. Oh, yes, people were out on the street, people with uniforms on.

Q. All right. Go ahead. A. People with uniforms from the church, the guards of this church.

Q. Well, weren't people coming -- you say people were not coming out of the church? A. I will say it again. When I got there, the guards were out in front of the church and I am not going to say that there wasn't anyone coming out of the church.

98 Q. Well, were Burke and Williams right behind you then? A. My name is Williams.

Q. Excuse me. Burke and Acker right behind you then? A. I told you once. When I got there, that is when it seemed like all the people got around me.

Q. Where did these people suddenly come from? A. Out of this church.

* * * *

100 Q. When did you first see Mrs. Allen? A. When I first see her?
When she grabbed me.

Q. Now, where was she when you first saw her? A. In front of me.

Q. She was in front of you? A. In front of me.

Q. Now, where did she grab you? A. She grabbed this arm.

Q. Where did you have your arm at the time she grabbed you?

A. Where did I have it?

Q. Where was your arm -- I mean with reference to the rest of
your body? A. Where an arm would be, by the side of me. When you
walk, you put it in various positions.

101 Q. No, I am talking about where was your arm? Where was your
arm? A. At my sides.

Q. She just grabbed your arm? A. She grabbed my arm.

Q. What did she have on her arm? A. I don't know.

* * * * *

102 Q. She grabbed you by the arm. Did you see Burke and Acker at
that time? A. No, I didn't, not right then.

Q. When did you next see them? A. When did I next see them?

Q. Yes. A. When I got on the other side of Rhode Island Avenue.

Q. You didn't see them until you got to Rhode Island Avenue?

A. That's right.

Q. When she grabbed you, what did you do then? A. What did I do?

Q. Yes. A. I started to show her I didn't have her wallet.

* * * * *

103 Q. And that was the next thing you did. In addition to talking to
her, you jerked loose from her, is that true? A. I had to. What am I
going to stand there for? I don't have her wallet. I am not going to stand
there.

* * * * *

Q. You told Mr. Simmons you were convicted of disorderly conduct

104 in -- A. That's right.

Q. You were convicted of jostling, weren't you? A. It was broke
down to disorderly conduct.

Q. You received 90 days for jostling -- A. -- For disorderly conduct. For disorderly conduct. Disorderly is what they broke it to. Is this what you basing your case on?

THE COURT: Now --

THE WITNESS: Two past cases?

THE COURT: Just a minute --

THE WITNESS: This is double jeopardy. This is what it is, double jeopardy.

THE COURT: Do you want to continue in this courtroom while your case is going on? If you do, you demean yourself properly. If not, you can retire, whichever you prefer. You have a right to stay here so long as you demean yourself proper and no longer.

* * * *

105 MR. SIMMONS: I wish to renew the motion for a directed judgment of acquittal made previously. I think it is stronger now.

THE COURT: For all the reasons therein stated?

MR. SIMMONS: Yes.

106 THE COURT: Is there anything you want to add?

MR. SIMMONS: I believe the testimony on examination shows again that he could not possibly have committed this offense, couldn't possibly have done it.

THE COURT: I still think it is a question for the jury to determine, so I will deny this motion at this time. With that you rest?

* * * *

[Filed Feb. 2, 1962]

JUDGMENT AND COMMITMENT

On this 2nd day of February, 1962 came the attorney for the government and the defendant appeared in person and by his attorney, Lawrence J. Simmons, Esquire;

IT IS ADJUDGED that the defendant has been convicted upon his plea of Not Guilty and verdict of Guilty of the offense of Violation of Title 22, D.C. Code, Section 2901 as charged and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Two (2) Years to Seven (7) Years.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ R. B. Keech
United States District Judge.

[Filed July 25, 1962]

NOTICE OF APPEAL

Name and address of appellant -- RICHARD X. WILLIAMS, D. C. Reformatory, Lorton, Va.

Name and address of appellant's attorney -- GEORGE P. LEMM, Esq., 806 Conn. Ave., N.W., Wash. D.C.

Offense -- Robbery.

Concise statement of judgment or order, giving date, and any sentence -- 2/2/62 to serve not less than two, nor more than seven years.

Name of institution where now confined, if not on bail -- D. C. Reformatory.

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the District of Columbia Circuit from the above-stated judgment.

Date -- 24 July, 1962

/s/ Richard X. Williams
by George P. Lemm
Appellant

/s/ George P. Lemm
Attorney for Appellant.

BRIEF FOR APPELLEE

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,186

RICHARD X. WILLIAMS, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the United States District Court
for the District of Columbia

DAVID C. ACHESON,
United States Attorney.

FRANK Q. NEBEKER,
TIM MURPHY,
Assistant United States Attorneys.

United States Court of Appeals
for the District of Columbia Circuit

NOV 9 1962

Joseph W. Stewart

CLERK

QUESTION PRESENTED

In the opinion of the appellee, the following question is presented:

1. Whether, in a pick-pocket robbery case where the victim testified that she was jostled, saw appellant's hand in her purse, discovered her billfold missing and accused appellant who fled, there was sufficient evidence of appellant's guilt to warrant submission of the case to the jury?

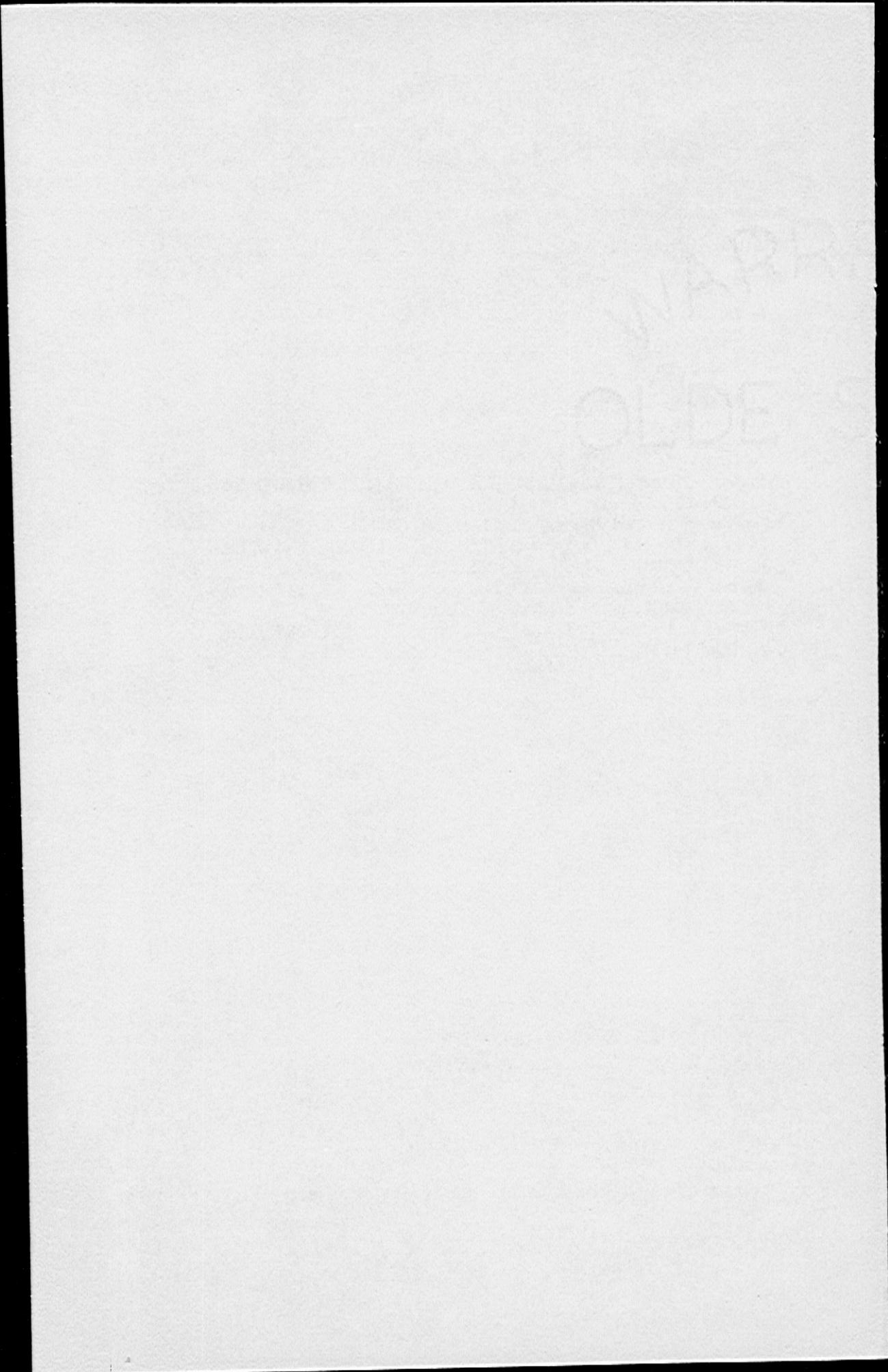
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* Cases chiefly relied upon are marked by asterisks.



United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,186

RICHARD X. WILLIAMS, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the United States District Court
for the District of Columbia

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

Under a one-count indictment filed on September 25, 1961, appellant was charged with robbery, Title 22, D.C. Code, Section 2901 (J.A. 1). He entered a plea of not guilty on September 29, 1961, and was tried by jury on December 20, 21, 1961. The jury found him guilty as charged and he was subsequently sentenced on February 2, 1961, to from two (2) to seven (7) years. This timely appeal followed.

Appellant's conviction is based primarily on the testimony of the victim of the robbery, Mrs. Mamie Allen.

Mrs. Allen testified that about 1:00 A.M. on Friday, August 25, 1961, she was leaving the House of Prayer for All People located at 1721½ Seventh Street, N. W., having attended church services (J.A. 3). She had with her, at this time, a large pocketbook containing her billfold. Just prior to leaving the church she had checked her pocketbook and saw the billfold which contained a dollar bill and three quarters (J.A. 3; Tr. 17, 19). She had closed the pocketbook, which was hard to open (J.A. 3), and proceeded to the sidewalk which was crowded with people. After arriving on the sidewalk, Mrs. Allen felt someone pressing and fumbling against her and this continued as she walked up the street (J.A. 3, 4). She stepped back and the person, identified as appellant, kept pressing against her until she looked at his face. When she moved up, he moved up with her and when she moved back, appellant moved back with her (J.A. 6). As she turned away, Mrs. Allen felt appellant's hand and grabbed his sleeve (J.A. 4). She also observed his hand in her then-open pocketbook.¹ She grabbed both of his hands but the left was such that she could not see if anything was in it.² Appellant swung her around and Mrs. Allen accused him of taking her billfold after she noticed it missing

¹ Mrs. Allen, on three occasions in the transcript, mentioned that the appellant's hand was in her pocketbook.

- (1) The Witness: With the left hand that was in my pocketbook and then I grabbed him with the right hand, the other hand was the right hand, and I was just swinging on to him and the pocketbook . . . (J.A. 7).
- (2) By Mr. Simmons (Defense Counsel): Q. Now, which hand do you say was in your pocketbook? A. The left hand. (Tr. 26)
- (3) By Mr. Simmons: Q. You don't know whether he took that or not, do you? A. I don't know definitely, but I know he had his hand in my pocketbook. (J.A. 7)

² Q. What was in his left hand? A. I couldn't see what was in his left hand because I had his hand like this, you know, (indicating) with this hand wrapped around and I had this hand holding to the other hand. I couldn't tell whether he had done passed the pocketbook on, see . . . (Tr. 23).

(J.A. 6, 7). A colloquy occurred during which appellant denied taking the missing billfold, then "snatched away" and ran down the street (J.A. 4, 5).

Detective Elroy Short, who responded to the scene testified he observed the appellant being held by some men. Mrs. Allen identified the appellant to him as the man whose hand she had seen in her pocketbook. Detective Short then arrested appellant and took him to the precinct station (J.A. 9). Detective Short further testified that at the precinct appellant offered to give Mrs. Allen money to avoid going to court. He also testified that appellant did not have the billfold but had some paper money on him at the time. An area search failed to recover the missing wallet (J.A. 9, 10).

One Algie Branch, a guard at the House of Prayer for All People (Tr. 40), testified that a woman identified appellant as having her wallet, and he went after appellant who was walking up the street. Appellant stopped and while being questioned turned and fled up the street till caught by two other men (J.A. 11). The trial judge denied appellant's motion for a judgment of acquittal (J.A. 12; Tr. 53).

Two defense witnesses were called, including the appellant. James Acker, Jr. testified that about 1:00 A.M. on the morning of the crime he left a poolroom with appellant and one Burke. Appellant was about 25 feet ahead of him (Tr. 56) when they walked past the House of Prayer. He did not see appellant take the billfold (J.A. 13) but he heard Mrs. Allen accuse appellant and saw him run when the crowd started chasing him. Acker testified that he and Burke, along with appellant, were searched and none of them had the billfold although he stated he had two dollar bills in his possession at the time (J.A. 14).

On cross examination, Acker testified that he had known appellant for seven or eight months; that after leaving the poolroom and walking near the House of Prayer he and Burke let appellant go ahead of them into the crowd coming out of church. He also testified he had

appellant in view at all times, although appellant was moving through a crowd of 150 people (J.A. 17). He next saw appellant arguing with a lady about her wallet but did not see her holding appellant's arm (J.A. 18). Acker admitted prior convictions for Housebreaking and Petty Larceny (Tr. 78).

Appellant took the stand on his own behalf and testified that on the morning of the crime he left the poolroom with Acker and Burke. As they were walking near the House of Prayer, Mrs. Allen grabbed his sleeve and accused him of taking her pocketbook. He denied having the pocketbook and started running when he saw knives in the crowd and was hit (J.A. 19). He stated that he had \$18.00 on him at the time and offered to give Mrs. Allen her money back (Tr. 88).³ On cross examination, appellant reiterated part of his previous testimony and said his arm was at his side when he was grabbed by the victim (J.A. 21). He also admitted a prior conviction of petty larceny (Tr. 83). A renewed motion for a judgment of acquittal was denied.

STATUTE INVOLVED

Title 22, District of Columbia Code Section 2901 provides:

Whoever by force or violence, whether against resistance or by sudden or stealthy seizure or snatching, or by putting in fear, shall take from the person or immediate actual possession of another anything of value, is guilty of robbery, and any person convicted thereof shall suffer imprisonment for not less than six months nor more than fifteen years.

³ Defendant: I said, "Lady, I didn't have your wallet. You know good and well I didn't have it."

She said, "You got my wallet."

I said, "Lady, look, if I had your wallet—if you think that I had your wallet," I said, "I got money in my pocket. I will give you your money back." (Tr. 88)

SUMMARY OF ARGUMENT

There was sufficient evidence to submit the case to the jury in a pick-pocket robbery trial where the victim testified she was jostled by appellant, saw his hand in her pocketbook and he fled when she discovered her billfold missing. Appellant introduced evidence which amounted to a denial of the charge. Where the evidence conflicts, the jury has the duty of resolving the issues. Here, the jury chose to believe the Government's evidence and their findings should not be disturbed on appeal.

ARGUMENT

The Evidence Was Sufficient To Submit The Case To The Jury

Appellant in his brief sets forth a review of the evidence and argues that the record fails to contain sufficient evidence to sustain a verdict of guilty. This conclusion is unwarranted. It is uncontradicted that the appellant was present at the scene of the crime at the time and place it occurred. It is also unquestioned that there came a time in which he was beside or nearby the victim, Mamie Allen; that he was accused by the victim, that he ran, that he was caught by the crowd, that he denied his guilt and was taken to the precinct where he offered to give Mrs. Allen her money. The events in issue involve what occurred when appellant was near the victim.

Mrs. Allen testified that she came out of church with the crowd about 1:00 A.M. She felt the appellant fumbling and pressing against her and this continued while she walked up the street. While appellant continued to move to and fro upon her, she felt his hand and grabbed it. She also observed the hand in her pocketbook which she was carrying containing a billfold with \$1.75 inside.

Immediately after she was jostled by the appellant she discovered her billfold missing from the then-opened pocketbook. Mrs. Allen accused the appellant and he fled until caught by the crowd. She did not see appellant take

the billfold and it was not recovered, but appellant's left hand which she saw in the pocketbook was out of sight after she grabbed him. Algie Branch, the church guard, testified he caught appellant after receiving a complaint and was questioning him when he fled. Detective Short testified the appellant offered to give Mrs. Allen money to avoid going to court.

In sum, the victim of a pick-pocket robbery testified that she was jostled by appellant who had his hand in her pocketbook, and who fled after being accused as well as offered to give her money back to avoid going to court.

Appellant, on the other hand, introduced a friend, one Acker, who testified he was with appellant near the scene of the crime when appellant walked some 25 feet ahead into the crowd. He did not see appellant take anything but was near him when he was accused and saw him run, and followed the crowd chasing him.* He is an admitted housebreaker and thief. Appellant, a convicted thief, took the stand in his own behalf and admitted being grabbed by the victim, being accused and finally running, but denied jostling Mrs. Allen or taking her billfold.

This brief summary of the evidence for and against appellant clearly reveals the presence of questions which the jury traditionally must resolve. The jury chose to believe the evidence presented by the Government. Taking the view of the evidence most favorable to the Government, and giving full play to the right of the jury to determine credibility, weigh the evidence, and draw justifiable inference of fact, a reasonable man might

* Although Acker stated appellant was 25 feet ahead of him in the crowd when they passed the House of Prayer (Tr. 56), he also stated that when the victim accused appellant he and Burke were "right on them, standing right there" (J.A. 17, 18). He further testified that after the crowd started chasing appellant, he and Burke walked down the street behind the crowd for about a block and one half (Tr. 75, 76). Since Mrs. Allen testified that the hand she observed in her pocketbook went out of sight after she grabbed appellant (see Fn. 2), the jury could have inferred from the presence of Acker and Burke "right there" that the wallet was passed to Acker or Burke and disposed of while they walked down the street behind the crowd.

fairly conclude appellant was guilty of robbery. *Glasser v. United States*, 315 U.S. 60 (1942). *Curley v. United States*, 81 U.S. App. D.C. 389, 392, 160 F.2d 229, 232 (1947), *cert. denied*, 331 U.S. 837.

Here the jury had an opportunity to observe the demeanor of the witness on the stand. The transcript is sprinkled with references to "indicating[s]" made by the witness to explain with gestures the events that occurred. The jury had a right to consider the fact of flight by the appellant as a circumstance inferring his guilt. *Green v. United States*, 104 U.S. App. D.C. 23, 259 F.2d 180 (1958), *cert. denied*, 359 U.S. 917. Both appellant and his alibi witness had criminal records which could be regarded by the jury as reflecting adversely upon their credibility.

It is settled that the verdict of the jury must be sustained if there is substantial evidence, taking the view most favorable to the Government to support it. *Glasser v. United States*, *supra* at 80; *Morton v. United States*, 79 U.S. App. D.C. 329, 147 F.2d 28 (1945), *cert. denied*, 324 U.S. 875. The standard of substantiality set forth in the *Glasser* decision is met by the evidence in the instant case.

The court when deciding whether the case should be submitted to the jury "must assume the truth of the Government's evidence and give the Government the benefit of all legitimate inferences to be drawn therefrom." *Curley v. United States*, *supra* at 392.

Wigfall v. United States, 97 U.S. App. D.C. 252, 230 F.2d 220 (1956), cited by appellant in his brief is in accord with appellee's position. In *Wigfall*, the victim was carrying a wallet inside a purse with a strong catch while seated in a streetcar. As she moved towards the exit she felt a pressure from her purse on her left hip. She ignored it until it was repeated, then looked up and saw Wigfall "short of hulking over" her. No one else was on the side of her that Wigfall was on. After leaving the streetcar she saw her purse open and wallet gone. In discussing the testimony in the case this Court stated: "If the wallet was in the purse and the purse was closed with a secure catch,

and if the owner felt the purse twice being pressed against her left hip, and if Wigfall was then hulking over her and no one else was on that side of her, and if immediately thereafter the wallet was gone, reasonable minds might well believe guilt beyond a reasonable doubt within the framework of these proven circumstances." *Wigfall v. United States, supra* at 253.

The only substantial distinction between the *Wigfall* case and this case is the presence of a large crowd around appellant and Mrs. Allen when they were together. In neither case was the billfold recovered. Mrs. Allen had a billfold within a pocketbook; she felt continued fumbling and pressing against her by appellant. She also felt him moving up and back upon her. She observed her pocketbook, with a hard-to-open catch on it, open after jostling by the appellant. She further saw his hand in her pocketbook, but lost sight of it when she grabbed him. Within the framework of these proven circumstances reasonable minds might well believe, as the jury did, that appellant was guilty beyond a reasonable doubt.

CONCLUSION

Wherefore, it is respectfully submitted that the judgment of the District Court be affirmed.

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